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OFFICE OF PETITIONS

In re Application of
Weiss et al.
Application No. 10/056,284
Filed: January 23, 2002
Attorney Docket No. 023070-122900US

DECISION ON PETITION

This is a decision on the petition filed July 9, 2002, requesting, in effect, that the "Notice Of Omitted Item(s)" mailed May 21, 2002, be withdrawn to the extent that it states that Figures 1 and 4 are missing.

The petition under 37 CFR 1.53 is **dismissed**.

The application was filed on January 23, 2002. On May 21, 2002, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" stating that the application had been accorded a filing date of January 23, 2002, and advising applicants that Figures 1 and 4 described in the specification appeared to have been omitted.

In response, the present petition was filed. Petitioners explain that Figures 1 and 4 were not missing in so far as petitioner never intended to file a Figure 1 or a Figure 4. The petition states, "the captions 'Figure 1' and 'Figure 4' are intended to give the reader reference points for the individually lettered figures." Petitioner did file Figures 1a to 1e and Figures 4a and 4b.

The "Notice Of Omitted Item(s)" mailed May 21, 2002, was correct in stating that Figures 1 and 4 described in the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn.¹ The specification refers to a Figure 1 and Figure 4 and both those figures are not present.

¹ Attention is directed to MPEP 601.01(g) which reads in part:

The Office of Initial Patent Examination (OIPE) reviews application papers to determine whether all of the figures of the drawings that are mentioned in the specification are present in the application. If the application is filed without all the drawing figure(s) referred to in the specification, and the application [is entitled to a filing date], OIPE will mail a "Notice of Omitted Item(s)" indicating that the application papers . . . are lacking some of the figures of drawings described in the specification.

Each application received by OIPE must be individually reviewed for compliance with both the statutory requirements for according an application a filing date and for compliance with various requirements of the rules. Many of the applications concern complex technology. Accordingly, the employees of OIPE, who are not trained engineers or scientists, are not expected to make a detailed comparison of the written description and drawings. To do so would require a greater expenditure of time and resources, with a resulting increased cost, than are currently allocated. In the past, applicants and practitioners have indicated to the PTO that such increases are undesired. Therefore, if a Figure listed in the specification is not present, OIPE sends a Notice of Missing Parts and does not examine the content of the drawings and specification to determine whether the Figure may have been unlabeled or mislabeled.

Since the present petition was not necessitated by any error on the part of the Office, the \$130 petition fee will not be refunded. The Notice states that the petition fee will be refunded if it is determined that Figure 1 and Figure 4 were present upon filing. Petitioner has not proven that a Figure labeled "Figure 1" and a Figure labeled "Figure 4" were submitted on January 23, 2002.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of January 23, 2002, using the application papers filed on that date.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy